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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHN ZHU and MICHELE ANN JANNETTE

Appeal 2007-3560
Application 09/840,954¹
Technology Center 2100

Decided: March 14, 2008

Before JAMES D. THOMAS, HOWARD B. BLANKENSHIP, and
JEAN R. HOMERE, *Administrative Patent Judges*.

HOMERE, *Administrative Patent Judge*.

DECISION ON APPEAL
STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 from the Examiner's rejection of claims 1 through 5, 7 through 10, 12 through 20, and 22 through 30. Claims 6, 11, and 21 have been canceled. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

¹ Filed on Apr. 24, 2001. The real party in interest is Sony Corp.

The Invention

Appellants invented a method and an Internet packet (IP) mobile wireless communication system (10) for allowing roaming client devices (12) to securely access subscription services. As depicted in Figures 1 through 3, a roaming client (12) sends to a proximate link terminal (32) an IP-based message including a unique session name associated with the client, and the unique shared key used to encrypt the message. As the roaming client device moves away from the first receiving link terminal (32), the IP-based message is seamlessly handed off to a second link terminal (32) that is closer to the roaming client device (12). The link terminal (32) strips the session name from the IP-based message before forwarding it to an application component (23) in the network operation center (NOC) (18). Upon authenticating the client, the NOC (18) tracks the location of the roaming client device to provide subscription services to said device based on its current location. (Spec. 7-11.)

An understanding of the invention can be derived from exemplary independent claim 18, which reads as follows:

18. A method for providing subscription services to client devices via a wireless IP network, comprising:

- sending at least one IP-packetized data stream to at least a first link terminal generating a unique session name;

- providing the data stream to at least one wireless client device in wireless IP communication with the first link terminal;

as the client device moves away from the first link terminal toward a second link terminal, handing off the data stream from the first link terminal to the second link terminal, such that the data stream is provided to the client device via the second link terminal;

stripping away the session name at the first or second link terminal from messages received from the client device;

tracking the client device to determine a location of the client device;
and

providing subscription services to the client device based at least in part on the location.

In rejecting the claims on appeal, the Examiner relied upon the following prior art:

Laursen	US 6,065,120	May 16, 2000
Ladue	US 6,070,070	May 30, 2000
Bayeh	US 6,098,093	Aug. 01, 2000
Rautila	US 6,549,625 B1	Apr. 15, 2003 (filed Jun. 24, 1999)
Ala-Laurila	US 6,587,680 B1	Jul. 01, 2003 (filed Nov. 23, 1999)

The Examiner rejected the claims on appeal as follows:²

1. Claims 1 through 5, 8, 9, and 29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Laursen and Ala-Laurilla.
2. Claims 7, 10, 12 through 20, 22 through 25, and 30 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Laursen, Ala-Laurila, Bayeh, and Rautila.

² The Examiner withdrew a rejection of claim 1 under 35 U.S.C. § 112, second paragraph, in the Examiner's Answer.

3. Claims 26 and 28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Laursen, Ala-Laurila, Bayeh, Rautila, and Ladue.
4. Claim 27 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Laursen, Ala-Laurila, Bayeh, and Ladue.

FINDINGS OF FACT

The following findings of fact (FF) are supported by a preponderance of the evidence.

Laursen

1. As depicted in Figure 1, Laursen discloses a method and system for allowing a mobile terminal (106) to securely access a web server (112) in a wireless network system by communicating with other intermediary devices. (Col. 1, ll. 26-36; col. 6, ll. 7-17.)
2. Upon submitting a request, the mobile terminal (106) must go through an authentication process including three message exchanges, (1) Session Request (SR), (2) Session rePly (SP), and (3) Session Completion (SC). The SR is initiated when the client submits a request. It includes, inter alia, a session ID, an encryption, and client device ID. (Col. 9, l. 55-col. 10, l. 7.)
3. At SR, the session ID is assigned to 0. (Col. 10, ll. 1-3, col. 11, ll. 48-50.)

4. At SP or SC, the session ID is assigned to 1 or 2. (Col. 11, ll. 50-57, col. 12, ll. 9-10, l. 48).

Rautila

5. Rautila discloses that conventional systems have used a tracking mechanism (e.g. GPS or mobile phone) to determine the location of a roaming client device, and to subsequently provide the client device with access to a server based on the identified location of the device. (Col. 1, ll. 28-39, ll. 47-59.)

PRINCIPLES OF LAW

OBVIOUSNESS

Appellants have the burden on appeal to the Board to demonstrate error in the Examiner's position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) ("On appeal to the Board, an applicant can overcome a rejection [under § 103] by showing insufficient evidence of *prima facie* obviousness or by rebutting the *prima facie* case with evidence of secondary indicia of nonobviousness.") (quoting *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)).

The Supreme Court in *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966), stated that the following factual inquiries underpin any determination of obviousness:

Under § 103, [1] the scope and content of the prior art are to be determined; [2] differences between the prior art and the claims at issue are to be ascertained; and [3] the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or nonobviousness of the subject matter is

determined. Such (4) secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented. As indicia of obviousness or nonobviousness, these inquiries may have relevancy.

Where the claimed subject matter involves more than the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for the improvement, a holding of obviousness must be based on “an apparent reason to combine the known elements in the fashion claimed.” *KSR Int’l v. Teleflex, Inc.*, 127 S. Ct. 1727, 1740-41 (2007). That is, “there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, 127 S. Ct. at 1741, (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)). Such reasoning can be based on interrelated teachings of multiple patents, the effects of demands known to the design community or present in the marketplace, and the background knowledge possessed by a person having ordinary skill in the art. *KSR*, 127 S. Ct. at 1740-41.

ANALYSIS

Claims 1-5, 7-9, 18-20, and 22-27, and 29

Independent claims 1 and 18 recite in relevant part stripping away at a link terminal the session name from messages received from a client device. (App. Br., Claims Appendix.) Appellants argue that Laursen does not teach that limitation. Particularly, Appellants submit that Laursen teaches a client that constructs a session request (SR) in part by establishing a session ID. Appellants acknowledge that Laursen also teaches constructing a session

reply (SP), which may have a session ID that is same or different from the SR ID. However, Appellants argue that Laursen is silent on whether the original session (i.e. SR) ID is stripped away from the message request. (App. Br. 5-6.)

The Examiner, in response, avers that Laursen teaches stripping the session name from the message by changing the value of the session ID of the SR stage from 0 to 1 or 2 in the SP/SC stages. The Examiner consequently concludes that the respectively applied combinations render the claimed inventions unpatentable. (Ans. 8-9.)

Therefore, the pivotal issue before us is whether Laursen's disclosure of assigning of different values to a session ID at different stages teaches stripping a session name away from a message. We answer this inquiry in the affirmative.

We begin by considering the scope and meaning of the terms "stripping the session name" which must be given their broadest reasonable interpretation consistent with Appellants' disclosure, as explained in *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997):

[T]he PTO applies to the verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicant's specification.

Id. at 1054. *See also In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989) (stating that claims must be interpreted "as broadly as their terms reasonably allow.")

Appellants' Specification states the following:

The link terminal 32 can be a L2TP-type router that collects IP packets and, programmed with the present logic, *strips the below-described session name from them*, leaving only IP headers with associated data. (emphasis added)
(Spec. 9, ll. 4-6.)

As discussed above, *IP packets from the client device 12 are stripped of the session name* by the link terminal 32 prior to forwarding the packets to the recipient, e.g. the NOC 18 or another client device. (emphasis added)
(Spec. 11, ll. 19-21.)

Our reviewing court further states, “[t]he ‘ordinary meaning’ of a claim term is its meaning to the ordinary artisan after reading the entire patent.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1321 (Fed. Cir. 2005).

Upon reviewing Appellants’ Specification, we fail to find any definition of the terms --“stripping” a session name-- that is different from the ordinary meaning. We find the ordinary meaning of the term “stripping” is best found in the dictionary. We note that the definition most suitable for “stripping” is “the act of removing.”³ Consequently, we construe stripping a session name from the message as removing the session name from the message.

It is undisputed that Laursen teaches that during an authentication process, upon submitting an IP-based request to access a server, a session request (SR) is constructed along with a session ID assigned to 0. The session ID is then assigned to 1 or 2 in the session reply (SP) or session complete (SC) stages. (App. Br. 6, Ans. 9, FF 2-4.) We recognize that the

³ Webster’s III, New Riverside University Dictionary 1148 (1994).

Examiner's interpretation of this teaching as suggesting the claimed stripping the session name from a message to be somewhat creative. It is however, not unreasonable. The reasoning behind the Examiner's finding seems to be predicated on the fact that the session ID associated with the SR stage is set to 0, whereas the session ID in the SP stage is set to 1 or 2. In the Examiner's view, since the session ID has been changed from 0 to 1 or 2, therefore, the initial session ID has been stripped or removed from the client's IP based message.

Even though Appellants acknowledge that the session ID in the SR stage and the session ID in the SP stage may be different, Appellants argue that these teachings of Laursen have little relevance to the claimed limitation. In so doing, Appellants failed to appreciate the equivalency that the Examiner sought to establish between Laursen's teachings and the claimed limitation. Instead, Appellants merely argue that the term "stripping or removing" does not appear anywhere in the reference, let alone in connection with the session IDs. Therefore, Appellants conclude that Laursen does not suggest stripping the session name from the message.

In our view, such gratuitous allegations are simply insufficient to show error in the Examiner's findings. We fail to find any substantive analysis of Laursen's teachings tending to show error in the Examiner's findings. Particularly, we find nowhere in Appellants' arguments any discussion of whether the session ID in the session request is the same as the session ID in the session reply or session complete, as construed by the Examiner. We further found no discussion in Appellants' arguments of whether the session ID in the session request is actually part of the client's

message, as construed by the Examiner. In sum, the weight of the evidence seems to favor the Examiner's position in light of Appellants' failure to particularly address the specific findings averred by the Examiner.

Further, Appellants' arguments regarding the informational content of the messages (stripped of their session ID) are not persuasive. Nowhere in the cited claims is there an indication that the stripped messages and content thereof are being used to functionally achieve something. The informational content of the stripped messages is therefore nonfunctional descriptive material, which is entitled to no patentable weight. *See Manual of Patent Examining Procedure* (MPEP) § 2106.01 (8th ed., Rev. 5, Aug. 2006).

When "non-functional descriptive material" is recorded or stored in a memory or other medium (i.e., substrate) it is treated as analogous to printed matter cases where what is printed on a substrate bears no functional relationship to the substrate and is given no patentable weight. *See In re Gulack*, 703 F.2d 1381, 1385 (Fed. Cir. 1983) ("Where the printed matter is not functionally related to the substrate, the printed matter will not distinguish the invention from the prior art in terms of patentability. Although the printed matter must be considered, in that situation it may not be entitled to patentable weight."). *See also Ex parte Curry*, 84 USPQ2d 1272 (BPAI 2005) (nonprecedential) (Federal Circuit Appeal No. 2006-1003; affirmed without written opinion Jun. 12, 2006). The Examiner need not give patentable weight to descriptive material absent a new and unobvious functional relationship between the descriptive material and the substrate. *See In re Lowry*, 32 F.3d 1579, 1582-83 (Fed. Cir. 1994); *In re Ngai*, 367 F.3d 1336, 1338 (Fed. Cir. 2004). *See also Ex parte Mathias*,

84 USPQ2d 1276 (BPAI 2005) (nonprecedential) (Federal Circuit Appeal No. 2006-1103; affirmed without written opinion Aug. 17, 2006).

It follows that Appellants have not shown that the Examiner erred in concluding that the combination of Laursen and Ala-Laurilla/Bayeh/Rautila renders independent claims 1 and 18 unpatentable.

Appellants did not provide separate arguments with respect to the rejection of dependent claims 2 through 5, 7 through 9, 18 through 20, 22 through 27, and 29. Therefore, we select independent claims 1 and 18 as being representative of the cited claims. Consequently, these dependent claims fall together with representative claims 1 and 18. 37 C.F.R. § 41.37(c)(1)(vii).

Claims 10-17, 28, and 30

Appellants argue that Rautila does not teach tracking a client device to thereby provide subscription services to the client based on its tracked position. Particularly, Appellants argue that Rautila teaches (column 2, lines 13-18) a device that determines the location of a transceiver, not that of a mobile device, as required by claim 10. (App. Br. 6-7.) As recognized by the Examiner, Rautila discloses (column 1, lines 28-39, and lines 48-59) that conventional systems have used tracking devices to locate a mobile client, and to subsequently provide access to the client based on its determined location. (Ans. 9, FF. 5.) Appellants' arguments did not address these particular findings set forth in the Answer. Rautila therefore teaches the claimed limitation. It follows that Appellants have not shown that the

Examiner erred in concluding that the combination of Laursen, Ala-Laurilla, Bayeh, and Rautila renders claim 10 unpatentable.

Appellants did not provide separate arguments with respect to the rejection of dependent claims 11 through 17, 28, and 30. Therefore, we select independent claim 10 as being representative of the cited claims. Consequently, these dependent claims fall together with representative claim 10. 37 C.F.R. § 41.37(c)(1)(vii).

CONCLUSION OF LAW

Appellants have not shown that the Examiner erred in concluding that:

1. Claims 1 through 5, 8, 9, and 29 are unpatentable over the combination of Laursen and Ala-Laurilla under 35 U.S.C. § 103(a).
2. Claims 7, 10, 12 through 20, 22 through 25, and 30 are unpatentable over the combination of Laursen, Ala-Laurilla, Bayeh, and Rautila under 35 U.S.C. § 103(a).
3. Claims 26 and 28 are unpatentable over the combination of Laursen, Ala-Laurila, Bayeh, Rautila and Ladue under 35 U.S.C. § 103(a).
4. Claim 27 is unpatentable over the combination of Laursen, Ala-Laurila, Bayeh, and Ladue under 35 U.S.C. § 103(a).

DECISION

We affirm the Examiner's decision rejecting claims 1 through 5, 7 through 10, 12 through 20, and 22 through 30.

Appeal 2007-3560
Application 09/840,954

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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